

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL McCREE FOUNTAIN,

Petitioner,

No. CIV S-04-2350 GEB DAD P

vs.

JAMES YATES, Warden,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 4, 2010, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. Petitioner has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

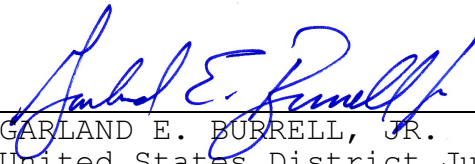
1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed June 4, 2010, are adopted in full;

3 2. Petitioner's March 19, 2010, request for reconsideration, construed as a  
4 successive habeas petition (Docket No. 58), is dismissed without prejudice to its refiling after  
5 obtaining authorization from the Ninth Circuit Court of Appeals; and

6 3. For the reasons set forth in the magistrate judge's June 4, 2010 findings and  
7 recommendations, petitioner has not made a substantial showing of the denial of a constitutional  
8 right. Accordingly, a certificate of appealability should not issue in this action.

9 Dated: July 12, 2010

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12 GARLAND E. BURRELL, JR.  
United States District Judge  
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